|  |
| --- |
| **InterManager IMO Report** |
| |  |  | | --- | --- | | |  | | --- | |  |   The IMO’s Legal Committee held its 102nd session from Tuesday 14 April through Thursday 16 April 2015 under the Chairmanship of Dr Kofi Mbiah (GHANA) and his Vice-Chair, Mr Walter de Sá Leitão (BRAZIL), both of whom were subsequently re-elected for 2016. 83 Member plus 2 Associate States together with 5 Inter-Governmental and 20 Non-Governmental organisations attended the meeting; points of interest to InterManager members are as follows:  **FACILITATION OF THE ENTRY INTO FORCE AND HARMONISED IMPLEMENTATION OF THE HNS CONVENTION 2010.**  With the entry into force of the Nairobi Wreck Removal Convention on 14 April 2015, the 2010 HNS Convention becomes the missing gap in the global framework of liability and compensation conventions. An HNS Correspondence Group (CG) co-ordinated by CANADA reported on its intersessional work which stressed the view that sharing and dissemination of information, such as providing examples of national legislation implementing the Convention, was one of the main purposes of the CG and that this was particularly useful with regard to the contributing cargo reporting requirements. Following discussion, the Committee agreed to:   1. note the complexities of the Convention and the need for an internationally coordinated approach to ratification and implementation; 2. extend the CG mandate until the next session; and 3. approve CG terms of reference (TORS).   With regard to CG TORS, in addition to collecting contributing cargo information, determining insurance or other financial security appropriate to article 12 of the Convention and assisting the IOPC Fund 1992 with developments and decisions, the CG was instructed to develop:   1. an ‘Understanding of the HNS Convention’ publication; 2. HNS Scenarios [a compendium]; and 3. a draft resolution on implementation and entry into force of the 2010 HNS Convention.     **FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT.**  The Committee was reminded that it had considered the outcome of a survey conducted by Seafarers’ Rights International (SRI) at its previous meeting, concerning implementation of the 2006 Guidelines on fair treatment of seafarers in the event of a maritime accident, adopted jointly by IMO and ILO; it recalled its suggestion to further analyse the responses to the survey, details of which were submitted by ITF in a document (LEG 102/4), co-sponsored by the International Federation of Shipmasters’ Associations (IFSMA), Comité Maritime Internationale (CMI) and InterManager. SRI introduced the document, providing a persuasive and detailed analysis of the survey. Based on views expressed by SRI and each of the other sponsors of LEG 102/4 regarding the seriousness and urgency of the issue, also the unalloyed support of all 35 Member States who spoke, together with several observer delegations, the Committee concluded that:   1. this important issue for seafarers should be placed on the work programme of the Legal Committee; 2. it should consider guidance on the implementation of the Guidelines for States that request it, in particular for developing countries; 3. technical support and assistance be provided by the Technical Cooperation Committee (TCC) in order to facilitate wide implementation of the Guidelines to improve conditions for seafarers, taking into account human right issues; 4. further consideration is needed regarding the progressive removal of legislation targeting seafarers and imposing criminal sanctions on them; 5. it would be useful for States already giving effect to the Guidelines to provide translated copies of their laws to assist other States with their implementation effort; 6. with regard to the compilation of statistics, it is also relevant to receive feedback from ports; 7. States be urged to provide their embassies with the names of persons whom seafarers could contact to report violations of the Guidelines; 8. seafarers be given greater training and awareness of their rights; and 9. IMLI and WMU curriculums should reflect this issue.   Finally, the Committee noted with gratitude that the industry (SRI) was prepared to contribute financially towards TCC’s work whilst observing that Member States could also do so. It supported the speedy implementation of the Guidelines and will report the outcome of LEG discussions to the TCC, MEPC, MSC and FAL.    **PIRACY.**  The Secretariat introduced paper LEG 102/5 providing information on developments regarding coastguard / policing legislation in relation to counter-piracy efforts off the coast of Somalia. It reported on the outcome of discussions by members of the Kampala Process at a meeting led by IMO, held in Addis Ababa from 23 to 26 September 2014 which included the following points:   1. although the IMO Project Implementation Unit (PIU) had expired after its successful conclusion, it did not affect the operation of the Code or the Djibouti Code Trust Fund; 2. IMO will continue to support implementation of the Djibouti Code of Conduct, also wider maritime security and safety-related projects; 3. piracy in the region will continue to be contained provided merchant ships implement IMO guidance and best management practices; 4. little progress has been made since 2010 in the work of the Kampala Process of building up the Somali maritime sector; 5. UNODOC’s capacity building programmes, supported by IMO, have made significant progress in upgrading legislation and judicial capacity in Somalia and the wider region; 6. IMO’s main focus is to help develop Somalia’s maritime sector through capacity-building under TCC auspices in order to create sustainable employment opportunities as an alternative to piracy; and 7. in relation to the Gulf of Guinea, progress is being made to meet the piracy threat and improve maritime law enforcement generally. The number of reported piracy incidents and armed robbery against ships continues to decrease but nevertheless, IMO’s strategy implementation for the region will include table-top exercises and assistance to upgrade legal frameworks.   Member States were urged to complete the questionnaire annexed to MSC-FAL.1/Circ.2 relating to port and coastal State requirements related to privately contracted armed security personnel (PCASP) on board ships at their earliest convenience given that to date only 18 Member States and one Associate Member have done so.  **TRANSBOUNDARY POLLUTION DAMAGE.**  The observer delegation of the Iberoamerican Institute of Maritime Law (IIDM) introduced a paper (LEG 102/11), containing an historical overview of various attempts to regulate offshore extraction activities, highlighting the need for a new international convention under IMO auspices to address the risks involved in offshore oil exploration and extraction operations which have ventured further into deeper waters, and to meet the liability arising from such activities. The Committee noted that, since IIDM is an observer delegation, it could only ‘take note’ of their document and that there is currently no compelling need to develop an international convention; as already agreed at previous LEG sessions, guidance on bilateral or regional agreements will continue to be developed. Towards this end, INDONESIA and DENMARK will remain as co-chairs of an Intersessional Consultative Group (ICG) developing draft text which will be presented to the Committee at its next session.  **PROPOSED DRAFT INTERNATIONAL CONVENTION ON FOREIGN JUDICIAL SALES OF SHIPS AND THEIR RECOGNITION.**  The Committee noted that the purpose of the proposed convention drafted by CMI, is to ensure international uniformity in relation to judicial ship sale procedures and to reinforce the principle that the purchaser of a ship in a judicial sale by a competent court should receive clean title to their ship, free of any pre-existing mortgages, liens or other encumbrances. This would make the judicial sale of ships less disruptive to shipping operations and the certainty brought by the draft convention would reduce the purchaser’s risks, thereby ensuring a more realistic sale price. Following discussion, the Committee thanked CMI but stated that, whilst not opposing the contents of the document in principle, further work by CMI and interested Member States to LEG 103 will be necessary to demonstrate a compelling need for such a convention and also, further persuasion as to whether the Legal Committee is indeed the proper forum for the suggested action.  **INTERPRETATION OF THE 1971 FUND CONVENTION AND THE 1992 CONVENTION IN RESPECT OF LIABILITY FOR CONTRIBUTIONS AFTER THE CONVENTION HAS CEASED TO BE IN FORCE.**  The UK contended in document LEG 102/11/3 that, following the winding up of the 1971 Fund Convention, contributors are now confronted by two conflicting interpretations of liability. The Committee was asked to consider whether such liability should fall to contributors in those States that were members of the 1971 Fund on the date of the incident, or on the date before the Convention ceased to be in force.  Following a lengthy discussion, the Committee thanked UK for its document and concluded that, although there is a desire for clarity of interpretation, a majority felt that Member States of the 1992 Fund Convention should interpret the Convention, and that the 1992 Fund Assembly, rather than the Legal Committee, would be a more appropriate body to consider the issue. Moreover, there is no urgency to provide such an interpretation as the 1971 Fund is no longer in force.  **OUTCOME OF THE INTER-AGENCY HIGH-LEVEL MEETING TO ADDRESS UNSAFE MIXED MIGRATION BY SEA.**  Members will recall that InterManager was represented at this meeting held at IMO on 4 and 5 March 2015. The representative of the United Nations International Organisation for Migration (IOM) stated that the primary obligation of the international community is to continue saving lives, in particular by providing more support for migrants through dedicated missions and ensuring proper law enforcement and promotion of initiatives with IMO to develop a joint database on migrant incidents and on suspected smugglers and vessels. Views expressed included the following:   1. the issue of mixed migration is a global problem, also that SAR facilities maintained by the shipping industry are not designed for rescuing hundreds of thousands of people drifting on small, unseaworthy boats left in shipping lanes; 2. the Legal Committee should review the international legal regime dealing with the complex issue of migration by sea and identify gaps that need to be addressed; 3. MSC, FAL and the Council must also address this issue as a matter of priority; and 4. the situation of migrants at sea and SAR services in the Mediterranean is desperate, requiring urgent action such that procedural obstacles should not prevent the Legal Committee and IMO from addressing this problem.   The delegations of MALTA and ITALY supported IMO’s further involvement, in particular, by conducting a review of SAR legislation, including the definition of ‘distress’ and its interpretation to ensure that legal regimes for SAR are able to respond to unusual situations,   Finally, MALTA, with the support of DENMARK, offered to coordinate an intersessional discussion on the study of the current legal regime and gaps that need to be addressed in relation to the drastic situation concerning migrants at sea.        Captain Paddy McKnight | |